



BOARD OF INQUIRY (*Human Rights Code*)

IN THE MATTER OF the Ontario Human Rights Code, R.S.O. 1990, c.H.19, as amended;

AND IN THE MATTER OF the complaint by Juanita Crook dated March 13, 1991, alleging discrimination in employment on the basis of sex by the Ontario Cancer Treatment and Research Foundation and the Ottawa Regional Cancer Centre.

B E T W E E N :

Juanita Crook

Complainant

- and -

Ontario Cancer Treatment and Research Foundation
Ottawa Regional Cancer Centre

Respondents

INTERIM DECISION

Adjudicator : Brettel Dawson

Date : June 19, 1995

Board File No: 93-0070

Decision No : 95-028-I

Board of Inquiry (*Human Rights Code*)
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IN THE MATTER OF a Board of Inquiry appointed
pursuant to s. 38(1) of the Human Rights Code,
R.S.O. 1990, c. H.19, as amended

BETWEEN

Dr. Juanita CROOK

Complainant

AND

ONTARIO CANCER TREATMENT AND RESEARCH FOUNDATION
and the
OTTAWA REGIONAL CANCER CENTRE

Respondents

Summary Statement of INTERIM DECISION
on Preliminary Matters: Written Reasons
for Decision to Follow

Date of Complaint: March 13, 1991
BOI File No.: 93-0070

Conference Call on
Preliminary Matters: June 15, 1995
Release of Determinations: June 19, 1995

Board of Inquiry: Professor T. Brett Dawson

Appearances (Conference Call)

For the Commission: Ms. Geri Sanson, Counsel

For the Complainant: Ms. Karen Clifford, Counsel
Nelligan and Power

For the Respondents: Mr. Michael Kennedy, Counsel
Appearing for Mr. Robert Little, Counsel
Hicks Morely Hamilton Stewart Storie

I indicated at the end of the hearing of preliminary issues before me by way of conference call on June 15 that I would reserve my decisions on several points. However, in light of the rapidly approaching substantive hearing dates, I indicated that I would expedite release of my determinations with written reasons to follow as soon as possible. This **Summary statement of INTERIM DECISION on Preliminary Matters** contains my rulings on the preliminary points raised.

In the course of correspondence and argument, the following preliminary matters were raised.

1. The requirements for delivery of material by the Respondents to the Complainant.
2. The propriety of provision by the Commission of a Book of Documents to the Board in advance of the Conference Call.
3. The admissibility of five documents in that Book of Disclosure.
4. On the motion of the Respondents requesting same, whether the physicians who issued the medical certificates should be required by the Board to attend the hearing as witnesses and be available for cross examination by the Respondents. And, if so, which party bears the responsibility for arranging the attendance of the physicians.
5. On the further motion of the Respondents requesting same, whether the complete medical files of Dr. Crook with the two physicians who authored the medical certificates should be disclosed/produced by the Commission.
6. Relatedly, in the submission of the Commission, whether the motions should be refused as an abuse of the process of the Board insofar as the Respondents seek to place in issue the medical condition of the Complainant.
7. On the motion of the Commission requesting the same, whether the Board should consider the Respondents' failure to provide proper notice of its case, the witnesses it intends to call and the associated documents including material related to a potential argument under section 1 of the Canadian Charter of Rights and Freedoms (the Charter).
8. The addition of a further ground of complaint by the Commission.

The agreements or determinations on each of these motions are as follows:

1. **Service on Dr. Crook:** Agreed between counsel for the Respondents and Complainants to make satisfactory direct arrangements.
2. **Provision of the Book of Documents:** Ruled that provision of the Book of Documents to me by the Commission in advance of the electronic hearing by way of Conference Call was appropriate to permit the documents on which counsel proposed to rely to be before me in the hearing. Prior to receipt into evidence or cognizance by me, the documents would be subject to arguments concerning admissibility and weight. I noted that in my view, it was open to a Board to review/scrutinize material prior to admission in the context of submissions concerning admissibility and that the Respondents had raised no immediate objection upon notice by Ms. Sanson of her proposed action. I further clarified that it was not my intention to review the documents generally prior to the substantive hearing.
3. **Admission of the documents:** The documents in question were three medical certificates/letters (Medical Certificate for Juanita Crook, dated May 07, 1990 signed by Dr. Cormier; Letter of Dr. Cormier to Dr. Evans re Juanita Crook dated June 07, 1990; Letter of Dr. Boudreau to Dr. Evans re Dr. Juanita Crook dated July 06, 1990), and two documents in issue authored by the Manager of Compensation and Benefits

(Letter from Patricia Brundrit, Manager of Compensation and Benefits, Human Resources Department, to Dr. Juanita Crook dated August 16, 1990; Notes from Telephone Conversation with Dr. Crook on October 18, 1990 signed by Patricia Brundrit on October 18, 1990.) I ruled all five documents admissible and they were admitted as Exhibits numbered 3-7 respectively.

4. Respondents' Motion requiring Attendance of the two physicians who issued the medical certificates: Denied. This does not preclude the Respondents calling the witnesses as part of their case and arranging for their attendance (I note that Dr. Boudreau has already been summonsed and that Dr. Cormier is out of the jurisdiction and hence would not seem compellable). In light of the circumstances made known by the doctors, I would consent to the doctors giving evidence, if called, by way of conference call. To this end, part of the scheduled hearing dates could be arranged as an electronic hearing. If so, notice should be given to permit arrangements to be made.


5. Respondents Motion for Disclosure of the Complete Medical Files of Dr. Crook: Denied.

6. Commissions submissions concerning refusal of the motions as inviting an abuse of the process of the Board: Denied.

7. Commission' Motion for Provision of Notice of Respondent's case: Denied. However, in the interests of orderly preparation of the hearing proper and to avoid the possible requirements for adjournment, submissions on the law and on the practical situation were entertained and direction was given and accepted at the hearing, for certain matters to be communicated by Mr. Kennedy to Mr. Little. In addition, Mr. Kennedy agreed to request that Mr. Little clarify by letter to Ms. Sanson, whether the basis of his arguments on section 25(2) were evidentiary (fact-based) or legal (interpretation-based); similarly with respect to any proposed section 1 arguments under the Charter.

8. The addition of a further ground of complaint by the Commission:
Not pursued at this time.

As noted above, written reasons will follow.



Professor T. Brettel Dawson
Chair

June 19, 1995